IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 927 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
RATILAL ASHABHAI PATEL - Respondent

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Appearance :
MR. M.A. PATEL, LD. APP for Appellant:
(MR SD PATEL) for Respondent:
MR KR RAVAL for Respondent:

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 02/02/2007

ORAL JUDGMENT

1. Heard learned counsels for the parties. The appellant State of Gujarat has preferred this appeal under section 378 of the Code of Criminal

Procedure, challenging the order of acquittal dated 25/4/1996 passed by learned JMFC, Borsad in Criminal Case No. 1681 of 1989, acquitting the respondent of the charge of commission of offence punishable under section 2(ix) (N),7 (2) and 16(1) (A) (1) of the Prevention of Food Adulteration At, 1954. This Court (Coram: A.N. Divecha) granted leave and admitted the appeal on 17/1/1997, which has now come up for final disposal today.

2. Brief facts leading to filing of this appeal deserve to be set out as under.

2.1 The original complainant / Food Inspector while discharging his duty as such in his jurisdiction visited the shop of the accused situated in the tower area of Borsad town dealing in groceries and food grains. The owner of the shop is the accused. The complainant Food Inspector had visited the shop of the accused on 30/5/1988 at about 12.15 hrs in the afternoon. The accused was present in the shop selling the food articles. The panch was summoned and after notifying his intention to collect the sample of red chilly powder for analysis, in Form-VI under Rule 12, he purchased 450 grams of red chilly powder on payment of Rs.11-25. The bill and receipt thereof is produced at exhibit 47 and 48. The notice under Rule 12 in From -VI is produced at exhibit-46. The food article was thereafter transferred

into dried odourless, clean, transparent bottles in three equal parts. The glass bottles were thereafter sealed with official seal of the authority and the entire procedure of sealing was performed in presence of the panch witness. The panchnama was drawn, which is also singed by concerned panch. The panchnama is produced at exhibit-49. Thereafter on 31/5/1988 the Food Inspector prepared memorandum in From No.7 and specimen impression of seal used to seal the packets/ bottles and sent the same to Public Analyst at Vadodara for the purpose of analysis. The memorandum and specimen impression of seal were sent separately by registered post A.D. to the Public Analyst, Vadodara. The same office copy is at exhibit-50, and seal impression is at exhibit-51. The copy of letter sent to Public Analyst is at exhibit-52 and receipt thereof is at exhibit-53. Remaining two portion of sample were sent to Local Health Authority at Nadiad as required under the law. The receipt issued by Local Health Authority is at exhibit-54. The Public Analyst opined the food article to be adulterated in his report and therefore the necessary papers were prepared for obtaining sanction for lodging prosecution against the accused for offence punishable under section 2, 7 and 16 of the Prevention of Food Adulteration Act, 1954 [herein after referred to as “PFA Act” for brevity]. It is important to note that the Local Health Authority accorded its sanction

which is at exhibit-58. The report of the Public Analyst is at exhibit-59. The complaint came to be lodged on 16/6/1989 which came to be registered as Criminal Case No. 1681 of 1989.

2.2 The Food Inspector informed the Local Health Authority vide his letter dated 17/6/1989 that the case was filed against the accused. The office copy of the letter is at exhibhit-61. The Local Health Authority issued notice under section 13 (2) of the Act to the accused along with copy of the Public Analyst informing him that he had the right to approach the court within ten days for having the remaining sample examined by Central Food Laboratory. The accused was summoned and the charge was framed at exhibit-67. The accused plea was recorded at exhibit-68, and accused further statement was also recorded on 8/2/1996 wherein he denied the case of the prosecution. The trial court came to the conclusion that the prosecution failed in establishing due compliance with mandatory provisions of the Rules and the prosecution failed in proving the guilt on the part of the accused, resulting into acquittal of the accused vide order dated 25/4/1996, which is impugned in this appeal.

3. Learned APP Shri. Patel has submitted that the order of the trial court being erroneous and patently illegal the same deserve to be quashed

and set aside. Shri. Patel has submitted that the trial court erroneously held that there was failure on the part of the prosecution in establishing due compliance with mandatory provisions of the Rules. Shri. Patel has submitted that testimony of the Food Inspector if read closely wold go to show that the mandatory provision of the PFA Rules have scrupulously been complied with by the Food Inspector. The trial court's finding in respect of non compliance with provision of Rule 14 therefore being erroneous same deserved to be reversed. Shri. Patel has submitted that the finding of the trial court that the sanction accorded under section 20 of PFA Act was not valid and it was accorded by the officer who was merely holding charge of the post is erroneous. Shri. Patel has submitted that the authority and order of sanction for lodging prosecution which is produced at exhibit-58 would clearly show that the officer was competent to accord sanction under section 20 of the PFA Act. The officer's admission in his cross examination that he was actually working as Senior Drug Inspector and at the time of incident he was holding Incharge of the post in itself can not be said to be proof that he was not competent to accord sanction. Shri. Patel has submitted that the vessels employed namely glass bottles for collecting and sealing the sample were also cleaned in compliance with Rule 14 of the Rules.

Therefore the findings of the trial court on this count also requires to be reversed. The food article being adulterated as per the opinion of the Public Analyst in its report the accused could not have been acquitted. The adulteration is affecting the entire society and therefor the accused be punished in accordance with law.

4. Shri. Raval learned counsel for the respondent/ accused has submitted that it is an established position of law that the Incharge Officer can not discharge statutory duty in his capacity as Incharge Officer. The statute authorises an officer to discharge statutory function and such functioning can not be discharged by an officer who has been holding the charge and who has not been substantively appointed on the post. Shri. Raval has submitted that, in the instant case no notification appointing Shri. Dixit the Sr. Drugs Inspector who was holding charge of the post can be said to have been duly appointed under section 20 of PFA Act. Shri. Raval has relied upon the decision of Division Bench of this Court in case of THE STATE OF GUJARAT Vs. DHIRAJLAL AMRATLAL KANSARA AND ANOTHER, reported in 16 GLR pg. 982 in support of his submission that Incharge Officer can not discharge statutory function. Shri. Raval has relied upon decision of this Court in case of STATE OF GUJARAT Vs. KANTILAL VASHRAM decided in Criminal

Appeal No. 317 of 1991 decided on 15/2/2000 [Coram: J.R. Vora, J], wherein the court relying upon the case of Dhirajlal Amratlal Kansara (supra) upheld for breach of Section 20(1) of the Act no sanction to prosecute can be accorded. Shri. Raval also relied upon another decision of this Court in case of STATE OF GUJRAT Vs. SAMIRBHAI HARISHANKARBHAI RAVAL, in Criminal Appeal No. 828 of 2004 decided on 23/6/2006 [Coram: S.R. Brahmbhatt, J] that the Incharge Officer have no right and authority to discharge statutory powers and functions envisaged under section 20 of the PFA Act.

5. Shri. Raval has further submitted that due compliance with provision of Rule 14 also required to be established beyond doubt by the prosecution. The testimony of the Food Inspector clearly go to show that, he admitted that he himself has not cleaned the bottles nor he had caused the bottles cleaned at the place where samples were collected and he said that the bottles were cleaned at his office. But the person who was responsible for cleaning bottles was not examined. In view of this it can well be said that the prosecution has failed in establishing due compliance with Rue 14 of the Rules, and on this count also the appeal deserves to be dismissed.

6. This Court heard learned counsels of the parties

at length. This Court is mindful that this being an acquittal appeal unless & until it is amply demonstrated by the appellant that the order of acquittal impugned in this appeal has in fact resulted in to miscarriage of justice the same need not be disturbed under section 378 of Cr.P.C. 1973. This Court is unable to accept the submissions advanced by Shri. Patel, learned APP that the acquittal could not have been ordered on mere technical infirmities. The submission with regard to validity of sanction itself is sufficient to uphold decision of acquittal impugned in this appeal. The law has now been crystallized in respect of validity of sanction to prosecute the accused under section 20 of the Act. In case of Dhirajlal Amratlal Kansara (supra) the Division Bench has, though in a case pertaining to Gujarat Municipalities Act, has unequivocally observed and laid down that the according of sanction is embedded in the statute and the officer concerned who has been duly appointed derives the power of according sanction for lodging prosecution while discharging statutory function. Such function can not be discharged by the person and or an officer who has not been substantively appointed and who has been merely holding the charge of the post of the authority whih is empowered to accord sanction. Relying upon this case, this Court in case of State Vs. Kantilal Vashram and in case of State Vs. Samirbhai Harishnkarbhai

Raval (supra) reiterated the same proposition in respect of section 20 of the PFA Act. In the present case the complainant Food Inspector has unequivocally admitted in his cross examination that he was merely holding charge of the post and when there was no notification or even an authority issued by the competent authority indicating that Shri. Dixit who had granted sanction in this case was duly authorised to grant sanction under section 20 of the PFA Act, it can well be said that the prosecution has failed in discharging its duty of proving that the sanction was validly issued. When the sanction itself was challenged on it being not validly issued by the competent officer, it was bounden duty cast upon the prosecution to atleast produce any document indicating that said Shri. Dixit was authorised by designation under section 20 of the Act to accord sanction. In absence of such document it can well be said that the prosecution has failed in establishing competence of Shri. Dixit to issue the sanction of prosecution. The next point urged by Shri. Raval deserves consideration and acceptance, that is prosecution's failure in establishing due compliance with mandatory provision of Rule 14 of the Rules. This Court in case of STATE OF GUJARAT VS. BHUPENDRA M. MEHTA, reported in 1999 (1) GLH pg. 227 has clearly observed that, it is not merely the duty of the prosecution to use clean vessel in collecting sample but it is the

duty of the prosecution to establish before the court to the satisfaction of the court that they have complied with Rule 14 of the PFA Rules. In the instant case, it can well be said from the testimony of the Food Inspector that the prosecution has failed in establishing due compliance with Rule 14 of the Rules.

7. In the result, this Court is of the considered view that the judgment & order of acquittal being just and proper and in accordance with law, the same needs no interference under Section 378 of the Criminal Procedure Code. The appeal is therefore required to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

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